

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Provision of Directory Listing) CC Docket No. 99-273
Information Under the)
Telecommunications Act of 1934,)
As Amended)

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF TELEGATE AG

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SUMMARY

The public interest requires the opening of the directory assistance market to robust competition. This should be a fully competitive market, but there are two obstacles: limited access to directory assistance databases and the fact that there is a single standard directory assistance dialing code — 411 — that allows the serving telephone company to provide this service non-competitively. The Commission should carry out Congress's intent to make all telecommunications markets competitive by eliminating these barriers to competition. This can be accomplished by (1) giving non-carriers nondiscriminatory access to directory assistance databases and (2) either ending the use of 411 for directory assistance or opening 411 up to competition and allowing customers to choose their provider of directory assistance service, just as they can choose their primary interexchange carrier.

First, there needs to be nondiscriminatory access to up-to-date, accurate directory assistance databases. Section 251 only requires telephone companies to give other telecommunications carriers access to these databases, but non-carrier directory assistance providers need access as well. The Commission should make clear in this rulemaking that the pro-competitive, market-opening objectives of the Telecommunications Act would be served by finding that the public interest — and in particular the interest of consumers — would be served by opening access to these databases further. The Commission's ancillary jurisdiction, its general rulemaking powers, and its Title II jurisdiction over common carriers give the Commission ample authority to adopt such a requirement.

The next obstacle is the numbering system used by consumers to reach local directory assistance. Unlike Europe, the United States uses a single number for local directory assistance — 411. This number is, as a practical matter, only available to the local telephone company serving a given customer. As a result, the continued use of 411 for directory assistance serves to perpetuate the non-competitive delivery of this service, which the European example shows can flourish as a competitive service. One way to address this is to end the use of 411 as a standardized directory assistance number. This would provide a clean break with the non-competitive provision of directory assistance service and foster a fully competitive industry. This is the way Europe brought competitive directory assistance to consumers.

The comments submitted in this proceeding plainly demonstrate the need for Commission action. Providers of new and innovative service offerings provide ample evidence of the limitations placed on their services by the current practices of the incumbent local exchange carriers. These incumbent carriers seek to maintain the status quo and protect their favored position in the market. Despite the carriers' claims to the contrary, Telegate and other similar parties have demonstrated overwhelmingly that the Commission has both the statutory authority and public policy mandate to take steps to open the market for competitive directory services.

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I. Introduction

Telegate AG, by its attorneys, hereby submits these reply comments in response to the Commission's *Notice of Proposed Rulemaking*, CC Docket No. 99-273, FCC 99-227 (Sept. 9, 1999)("NPRM"). The record before the Commission clearly demonstrates that the Commission must eliminate two bottlenecks that impede competition in directory publishing and directory assistance. The first bottleneck is unreasonable and discriminatory control over access to directory assistance databases and subscriber list information. Other commenters rightly emphasize the critical importance of nondiscriminatory access to this information for competitive providers of directory services. The second bottleneck, which Telegate identified in its initial comments, is the incumbent local exchange carrier ("ILEC") control of the nationally-established directory assistance number, 411.

The incumbents, who continue to enjoy a monopoly position in this market, predictably argue that the Commission cannot, or should not, act to open the directory assistance market to full competition.

On balance, however, the comments demonstrate that the Commission has ample authority to require ILECs to give all competitors fair and nondiscriminatory access to

directory assistance databases and subscriber list information. Moreover, the fundamental purpose of the 1996 Telecommunications Act – opening all telecommunications markets to competition – requires that the Commission eliminate these bottlenecks.

Consumers of a wide range of telecommunications services are enjoying the benefits of the Commission’s pro-competitive policy framework. These benefits include technical innovation, better customer service, and cost-based pricing. The comments in this proceeding attest that competitive providers of directory assistance services are already providing these benefits.

In addition, Telegate’s experience in Germany shows that competition in the directory services market will also provide increased service to unserved or underserved populations, such as the large Turkish-speaking population in Germany. The special needs of minority communities in the United States are often ignored by the entrenched incumbent providers of directory services. Robust competition in the directory services market will ensure that all Americans have access to the advanced services offered by competitive providers.

The comments in this proceeding make clear that consumers will enjoy these benefits only if the Commission opens the directory services market to full and fair competition by eliminating the remaining bottlenecks that now impede competition.

II. The Commission Should Give All Competitors Access To Directory Assistance Databases Pursuant To Section 251(b)(3)

A review of the comments makes it clear that the companies that presently dominate the directory assistance market are attempting here to manipulate the explicit language of section 251(b)(3) of the Communications Act of 1934, as amended (the

“Act”)¹ and to undermine the underlying pro-competitive purpose of the Telecommunications Act in order to limit competition as much as possible. The Commission must interpret section 251(b)(3) broadly for several reasons. First, the Telecommunications Act was intended to open all segments of the telecommunications market to competition – including the market for directory services. A broad interpretation of section 251(b)(3) will serve this goal. Second, as numerous commenters observed, the Commission has already interpreted section 251(b)(3) to apply to entities that are not providers of telephone exchange or telephone toll service where such an interpretation is necessary in the public interest. In any event, as the NPRM suggested, the Commission should interpret the class of entities eligible to receive access broadly so as to include both directory assistance providers that offer call completion services and entities that operate as the agents of carriers. It would be irrational, however, to then allow ILECs to discriminate against directory assistance providers that do not provide call completion services or act as agents of carriers.

A. Call Completion Service Constitutes The Provision Of Telephone Exchange Service Or Telephone Toll Service Under Section 251(b)(3).

Section 251(b)(3) applies to “competing providers of telephone exchange service and telephone toll service.” As demonstrated by the initial comments, it is clear that call completion falls into these categories. For instance, INFONXX’s comments provide a comprehensive explanation of the actual functioning of call completion services.² This confirms that call completion qualifies as “telephone exchange service” and “telephone toll service.” In addition, the Commission’s own analysis in the *US West Forbearance Order* is especially persuasive. In that proceeding, the Commission found that the

¹ 47 USC §251(b)(3).

provision of directory assistance constituted an interLATA service since the dialing of 411 or 1-411 triggered a transmission across telephone exchanges.³ Additionally, the Commission also found that traditional directory assistance services are adjunct-to-basic services because they facilitate the use of the basic network.⁴

The comments of Excell Agent Services, L.L.C.⁵ (“Excell”) and Listing Services Solutions, Inc.⁶ (“LSSi”) also provide further explanations of the specific functioning of call completion which confirm that this service is within the scope of section 251(b)(3). Excell demonstrates that a directory assistance provider can provide both the incoming circuits from the carrier’s distant switches and then the terminating transport from the directory assistance provider’s switches to the desired listing. This service constitutes telephone toll service.⁷ LSSi further explains that call completion constitutes telephone exchange service when it allows a caller to connect to another telephone subscriber by means of the workstation or switching facilities of the directory assistance provider.⁸

On the other hand, the commenters that claim that call completion does not constitute telephone exchange or telephone toll service provide essentially no support for this erroneous proposition. Cincinnati Bell simply contends that call completion “does not actually transmit a call over the network.”⁹ As noted above, however, this claim is

² Comments of INFONXX at 7-12.

³ See Comments of INFONXX at 10-11, citing *In re Petition of US WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of Directory Assistance, Petition of US WEST Communications, Inc. for Forbearance*, CC Docket No. 97-172, FCC 99-133 (September 27, 1999) (“*US West Forbearance Order*”), ¶¶18-20.

⁴ Comments of INFONXX at 11, citing *US West Forbearance Order*, ¶¶60-61.

⁵ Comments of Excell at 10-11.

⁶ Comments of LSSi at 11-12.

⁷ Comments of Excell at 10.

⁸ Comments of LSSi at 12.

⁹ Comments of Cincinnati Bell at 12.

simply wrong. The United States Telephone Association (“USTA”) agrees with Cincinnati Bell, stating that a non-carrier does not become a telephone exchange carrier unless it also provides call origination services.¹⁰ Taken to its logical conclusion, this would suggest that 800 service and similar services do not constitute telephone toll service because they do not allow call origination service. Obviously, the Commission has never embraced such a proposition and should not do so now. Bell Atlantic concedes, at least, that call completion by a directory assistance provider may fit into the definition of section 251(b)(3) “depend[ing] on how it provides those services.”¹¹

As several commenters explained, call completion service involves connecting one telephone subscriber to another, generally using a combination of the directory assistance provider’s own facilities and facilities of another carrier. Call completion service may therefore be analogized to resale of either local exchange service or of interexchange service. Hence, it is clear that the provision of call completion by a directory assistance provider constitutes telephone exchange service and/or telephone toll service within the terms of section 251(b)(3). The virtually baseless contentions to the contrary can be seen as nothing more than another attempt to limit competition in the directory assistance market.

B. Agents Of Carriers Are Entitled To Benefits Of Section 251(b)(3) Pursuant To Section 217.

The comments also demonstrate that non-carrier directory assistance providers are entitled to nondiscriminatory access to directory assistance when such providers are acting as agents of a carrier. For example, Excell, Metro One Telecommunications, Inc. (“Metro One”), and INFONXX cite several cases in which the FCC has allowed agents to

¹⁰ Comments of USTA at 7, n. 9.

assume the benefits of their principals.¹² In particular, the Commission has found no basis for the “assertion that section 217 reflects a congressional intent to restrict the activities of carriers’ agents.”¹³ Teltrust, Inc. (“Teltrust”) cites a joint statement of the House and Senate which explained that “the duties imposed under section 251(b) make sense in the context of a specific request from another telecommunications carrier or *any other person* who actually seeks to connect with or provide services using the LEC network.”¹⁴ Clearly an agent of a carrier that intends to offer directory assistance for the carrier qualifies as “any other person who seeks to . . . provide services using the LEC’s network.”

Several carriers read a peculiar limitation into sections 217 and 251 which would serve no apparent purpose other than to limit competition. While Cincinnati Bell Telephone and MCI WorldCom agree that under section 251(b)(3), an agent for a carrier could possess and use the directory data for the carrier, they contend that it is only the carrier that has the right to acquire the directory assistance information.¹⁵ They would require a carrier to acquire the directory assistance information first and then pass it on to the agent, even if the carrier itself wanted to contract with an agent to provide all services related to directory assistance, including the directory data acquisition. Thus, these commenters essentially demand that the FCC limit the freedom of carriers to create

¹¹ Comments of Bell Atlantic at 5.

¹² Comments of Excell at 6; Comments of Metro One at 17-18; Comments of INFONXX at 17-18. Excell and Metro One both note that the FCC permits the National Exchange Carrier Association to file tariffs on behalf of, and provide billing and collection services for certain incumbent LECs. *Communique Telecommunications, Inc. d/b/a/ LOGICALL*, 10 FCC Rcd. 10399 (1995) (“*Communique*”). In another case referred to by Excell, the Commission, citing the goal of increased competition, allowed the RBOC customer premises equipment subsidiaries to act as agents in jointly marketing their basic services with their enhanced services. *American Information Technologies Corp.*, 98 FCC 2d 943, 945, 951-52 (1984), recon. denied, 59 RR 2d 309 (1985).

¹³ *Communique*, 10 FCC Rcd. at 10403, ¶23.

¹⁴ Comments of Teltrust at 5, citing H.R. Conf. Rep. No. 104-458, at 121 (emphasis added).

¹⁵ Comments of Cincinnati Bell Telephone at 11; Comments of MCI WorldCom at 4-5.

comprehensive agency relationships with directory assistance providers. It is obvious from the brevity of the surrounding discussion that there are no policy reasons to support this artificial limitation of agency relationships, other than the desire to minimize competition.

Furthermore, the comments show that it would be nonsensical and impractical to prevent independent directory assistance providers from providing to their own customer base those directory assistance listings already obtained by them as agents pursuant to section 251(b)(3).¹⁶ It would be wasteful and unreasonable to require the same provider to request and pay for the same information multiple times. This would serve only to decrease competition in the directory assistance market.

C. Sections 201(b) And 202(a) Of The Act Require That Non-Carrier Providers Receive Reasonable, Nondiscriminatory Access to ILEC Databases.

The clear language of sections 201(b) and 202(a) and Commission precedent require that non-carrier directory assistance providers, as well as those agents of carriers or providers of call completion services, must be given reasonable, nondiscriminatory access to ILEC directory assistance databases. Section 201(b) provides that any “charge, practice, classification, or regulation [in connection with communication service] that is unjust or unreasonable is hereby declared to be unlawful.” Section 202(a) states further that:

It is unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

¹⁶ Comments of Excell at 7-8.

As the comments of a number of parties demonstrate, ILEC practices that deny non-carrier directory assistance providers access to directory assistance databases violate both section 201(b) and section 202(a).

1. There Is No Rational Reason To Discriminate Against Independent Non-Carrier Providers.

The comments demonstrate the obvious point that non-carrier directory assistance providers are being treated differently from carrier directory assistance providers in a way which constitutes unjust or unreasonable discrimination in charges, practices, classifications and regulations.¹⁷ For example, Excell explained that Southwestern Bell charges directory assistance providers a rate that is more than 53 times the approved cost-based rate for telecommunications providers.¹⁸ There is no rational way to justify this dramatically discriminatory treatment which prevents independent directory assistance from fully competing with the carrier providers.

As we have stated above, providing call completion service should certainly make a directory assistance provider eligible for access to ILEC directory assistance databases as providers of telephone exchange service or telephone toll service under any reasonable reading of section 251(b)(3). At the same time, however, ILEC practices that differentiate among customers on the basis of whether they are carriers or whether they offer call completion services are unreasonably discriminatory on their face. These practices constitute both an unjust and unreasonable practice in violation of section 201(b) and an unjust and unreasonable discrimination in violation of section 202(a). There is no valid reason for denying non-carrier providers of directory assistance access

¹⁷ Comments of Excell at 12-16; Comments of Metro One at 20-21; Comments of INFONXX at 20-26; Comments of LSSi at 16-19.

to directory assistance databases on reasonable, nondiscriminatory terms. Ordinarily, the Commission will allow carriers to discriminate among customers only if they can demonstrate that there is a cost justification for such discrimination.¹⁹ Here, there can be no such justification.

Moreover, if the Commission allows ILECs to maintain such discriminatory practices, the market for directory assistance services is likely to be skewed, as Telegate noted in its initial comments.²⁰ This is because non-carrier providers of directory assistance may elect to provide call completion services or to become agents of established carriers solely in order to obtain access to the ILECs' databases. While many non-carrier providers of directory assistance may elect to provide call completion service, or to serve as carriers' agents, these decisions should be driven by the marketplace, not by unreasonable distinctions among the customers for the ILECs' databases.

2. The Commission Has Ample Jurisdiction To Ensure That All Competitors Obtain Reasonable, Nondiscriminatory Access to ILEC Directory Assistance Databases.

As the Commission noted in the NPRM²¹ and as numerous comments confirm,²² the Commission has already adopted an expansive reading of section 251(b)(3) in the *Local Competition Second Report and Order* in order to prevent unreasonable discrimination against paging carriers.²³ In that decision, the Commission first

¹⁸ Comments of Excell at 13.

¹⁹ See, e.g., *In The Matter of Expanded Interconnection with Local Telephone Company Facilities*, CC Docket No. 91-141, FCC 94-190, 9 FCC Rcd. 5154, at ¶126 (1994) ("LECs may reasonably charge different rates to different customers if they incur different costs to serve those customers.").

²⁰ Comments of Telegate at 5.

²¹ NPRM, ¶189.

²² Comments of Excell at 12; Comments of INFONXX at 22; Comments of LSSi at 18; Comments of Teltrust at 11-12.

²³ *Second Report and Order in the Matters of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (Second Report and Order)*, CC Docket 96-98, 11 FCC Rcd. 19392, 19538 at ¶¶332-334.

determined that paging carriers are not providers of telephone exchange service or telephone toll service, and therefore, are not covered by section 251(b)(3).²⁴ Next, noting that paging carriers compete with other CMRS providers and need the protection of section 251(b)(3) to be competitive, the Commission extended the reach of section 251(b)(3) to paging carriers.²⁵ It did so after determining that discriminatory treatment of paging carriers violates sections 201(b) and 202(a).²⁶ It is clear that this same precedent must also apply here, as competitive providers of directory assistance must have fair and reasonable (i.e., cost-based) access to directory assistance directory data to promote competition in telecommunications.

As INFONXX notes, the Commission has often used sections 201 and 202 to promote local and long distance telephone competition.²⁷ In the *Third Computer Inquiry*, the Commission explained that it had jurisdiction under sections 201 through 205 to control discrimination in the provision of ONA elements to competing providers of advanced services.²⁸ As early as 1970, the Commission established that even when there “is no specific provision which bars a common carrier from providing non-regulated services....,” sections 201, 202, and other provisions of the Act grant “a broad range of powers to the Commission with respect to carriers subject to its jurisdiction in order to effectuate the policies and objectives of the Act.”²⁹ The Commission should again

²⁴ *Id.* at ¶333.

²⁵ *Id.*

²⁶ *Id.* at ¶¶332-334.

²⁷ Comments of INFONXX at 21.

²⁸ *Id.*, citing Memorandum Opinion and Order on Reconsideration, *In re Amendment of Sections 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)*, CC Docket No. 85-229, 2 FCC Rcd. 3035, 3051 (1987).

²⁹ *Id.*, citing Tentative Decision, *Regulatory and Policy Problems Presented by the Independence of Computer and Communication Services and Facilities*, Docket No. 16979, 28 FCC 2d. 291, 299-301 (1970).

exercise its broad jurisdiction in order to effectuate the objective of the Telecommunications Act, which is to promote competition.

Moreover, the Commission in the *US West Order* has already ordered at least one carrier to make available to “unaffiliated entities” directory assistance information “at the same rates, terms, and conditions it imputes to itself.”³⁰ While this action was ordered in the context of a forbearance analysis, the Commission nonetheless determined that there would be an intolerable anti-competitive effect if such information were not made available to unaffiliated entities. The Commission should follow this analysis and similarly conclude that ILECs must make the same information available to all competitive providers of directory assistance at reasonable and non-discriminatory rates, terms and conditions.

Taken together, these precedents amply demonstrate that GTE and others are mistaken when they state that no previous precedent supports the use of sections 201 and 202 to require ILECs to provide reasonable and non-discriminatory access to directory assistance databases.³¹

Despite the plain language and Commission precedent to the contrary, several commenters also contend that sections 201 and 202 cannot apply here because the rates, terms, and conditions related to directory assistance are not in connection with “interstate communication by wire or radio” or “communication service.”³² These parties are mistaken. Directory assistance is a necessary element of “communication service” since it allows a party to make use of the telecommunications network to access another party who, without directory assistance, the party would not be able to access. As noted by

³⁰ *US West Forbearance Order* at ¶¶3, 37.

³¹ Comments of GTE at 10.

INFONXX , the Commission already has recognized that directory assistance “facilitate[s] the use of the basic network” and is properly classified as adjunct to basic.³³ There is no doubt, then, that such a service is provided in connection with communications services.

In summary, a fair reading of Section 251(b)(3) compels the conclusion that agents of carriers and directory assistance providers that offer call completion services are entitled to the benefits of that section. Further, the Commission must apply sections 201(b) and 202(a) so as to prevent the unjust and unreasonable discrimination that the ILECs now engage in by denying non-carrier directory assistance providers reasonable access to their directory assistance directory databases.

III. Directory Assistance Is Oral Publication Under Section 222(e).

Telegate also reiterates its position, supported by many parties, that the Commission has the flexibility under section 222(e) of the Act³⁴ to recognize directory assistance as a form of oral publication, thereby providing an independent basis for access to subscriber list information by non-affiliated directory assistance providers. As virtually all of the comments make clear, the various methods by which directory information are packaged and provided to the public are rapidly evolving as new service providers seek to develop innovative offerings to attract customers.³⁵ Where once consumers could choose only between the phone book and a Ma Bell operator, now there

³² Comments of Cincinnati Bell at 12-13; Comments of Bell Atlantic at 7-8.

³³ Comments of INFONXX at 23, citing *US West Forbearance Order* at ¶61.

³⁴ 47 USC §222(e).

³⁵ See, e.g., Comments of LSSi at 30 (regarding provision of new internet-based services); Teltrust at 9 *et seq.* (noting presentation of information in paper, magnetic tape, optical disk, CD-ROM and oral formats); Comments of GTE at 4 (“One clear policy goal of Section 222(e) is to promote competition among

is an increasing variety of different services employing different content and delivery vehicles. Clearly, however, these different directory information sources compete against one another and should have equal access to ILEC directory information.

The Commission must read each of the relevant sections of the Act so as to promote competition and encourage the development of new and innovative service offerings to consumers. A number of incumbent carriers admit or, in some cases, even praise the rapid expansion of innovative subscriber information services.³⁶ At the same time, however, they either deny that any regulatory change is needed, or else assert that the Commission does not have the statutory authority to promote such services in a non-discriminatory manner under section 222. Telegate opposes the arguments set forth by these parties.

First, several incumbents claim that healthy competition in the directory services market is developing rapidly and that the Commission need not make any regulatory changes in order to maintain this growth.³⁷ This is hardly a surprising contention from carriers that currently enjoy a dominant position in the market and hope to retain it. Some parties, however, make the extraordinary and unsupported claim that providing competitors reasonable and non-discriminatory access to subscriber list information would actually *hinder* the growth of such competition.³⁸

It is not difficult to refute those comments that claim competition would be promoted by maintaining the status quo. Indeed, the Commission need only note the

directory publishers, and to promote the availability of directory offerings *in whatever format customers may use.*")(emphasis added).

³⁶ See, e.g., Comments of USTA at 4 *et seq.*

³⁷ Comments of GTE at 6; Comments of US West at 3.

³⁸ Comments of USTA at 6 ("To the extent that there is convergence occurring with respect to directory publishing and directory assistance, the FCC must exercise restraint in revisiting existing regulations upon

identities of the parties making such claims (and of those parties challenging it) to understand the true dynamic involved. Thus, while US West, Bell Atlantic and GTE all urge the Commission to maintain the current discriminatory regime, competitors and potential competitors such as INFONXX, Metro One, Time Warner and LSSi unanimously agree that the Commission should require incumbents to give all competitors non-discriminatory access to subscriber list information under section 222.

Those parties who support the status quo also claim that the Commission lacks authority to permit fair access to subscriber list information. For instance, several parties claim that the word “publish” has a narrow meaning pursuant to both common usage and legislative intent confining it to publication either in paper or electronic form and not including oral publication.³⁹ This argument is unpersuasive. As several other commenters demonstrate, the definition of “publish” is broad enough to encompass oral publication not only under common usage, but in legal parlance as well.⁴⁰ Indeed, as these commenters note, the Supreme Court has held that the oral transmission of information is a form of publication.⁴¹ Moreover, as Teltrust notes, the legislative history of section 222(e) indicates that Congress plainly contemplated a pro-competitive and expansive reading of the statute regarding the manner in which directory information could be distributed.⁴² Thus, both the language and the legislative history of section 222 support the conclusion that oral publication of directory information fits within the term “any format” of publication. To hold otherwise would risk freezing technology in this

such a converging market, or it risks stifling innovation and investment by both incumbents and new entrants.”).

³⁹ GTE at 3; Cincinnati Bell at 7; Bell Atlantic at 4.

⁴⁰ Comments of Metro One at 5; INFONXX at 29 (noting that both Webster’s and Black’s Law Dictionaries define publication broadly to mean dissemination of information in any form).

⁴¹ Metro One at 5, citing *Gertz v. Welch*, 418 U.S. 323, 332 (1974).

segment of the telecommunications industry by excluding innovative providers from the market. Similarly, the Yellow Pages Publishers Association (“YPPA”) seeks protection from new competitors by asserting that “Congress clearly segmented the services, and the Commission should not attempt to mingle them.”⁴³ In fact, however, it is technology that is blurring old distinctions and neither Congress nor the Commission should permit entrenched incumbents to stifle market-driven innovation.

Some incumbents also attempt to raise fears that directory assistance providers could misuse information they obtain under section 222(e).⁴⁴ These parties claim that if directory assistance providers have access to subscriber list information, they will publish unpublished numbers. In fact, precisely the opposite is true. As Telegate stated in its comments, directory assistance providers sometimes disclose unpublished numbers today simply because they do not have access to the information controlled by the ILEC and must therefore use less reliable sources of information.⁴⁵ As Time Warner notes, local exchange carriers maintain bottleneck control over the provision of directory assistance information.⁴⁶ This prevents independent directory assistance providers from maintaining complete, up-to-date, and accurate directory databases, thereby seriously detracting from the value of their product. It also has allowed the incumbents to charge exorbitant amounts of money for the information that they do provide.⁴⁷

In its initial comments, Telegate urged the Commission to invoke its broad powers under sections 201 and 202 of the Act and to give full meaning to section 222(e)

⁴² Comments of Teltrust at 9 (purpose of Section 222 is to “thwart the LECs’ total control over subscriber list information”).

⁴³ Comments of YPPA at 5.

⁴⁴ Comments of GTE at 6; MCI WorldCom at 9.

⁴⁵ Comments of Telegate at 2.

⁴⁶ Comments of Time Warner at 2 *et seq.*

⁴⁷ *See, e.g.,* Comments of Excell cited in footnote 18 above.

in order to end the ILECs' unjust and unreasonable practices of discrimination in their provision of subscriber list information to directory service providers. The comments submitted in this proceeding amply support Telegate's position.

IV. The Public Interest Requires A Level Playing Field For All Competitors.

The comments make clear that the lack of reasonable, nondiscriminatory access to the ILECs directory assistance databases and subscriber list information is seriously impeding competition in the directory services market. As Telegate also established in its initial comments, the continued monopoly over the national directory assistance number, 411, also impedes the development of robust competition in this market.⁴⁸ Moreover, as both the NPRM and many commenters observe, several states have established rules that seek to promote competition in this market. These state regulations, however, are necessarily only piecemeal efforts to permit competition in what is rapidly becoming a national market. Under these circumstances, the Commission must establish a national policy framework to promote fair competition in the directory services market.

First, as the NPRM recognized and as the comments confirm, advances in technology and innovation in service provision are rapidly blurring the line between directory publication and directory assistance. As a result, it is probably more accurate to speak of "directory services" generically. Congress could not have foreseen these developments, just as neither Congress nor anyone else could have foreseen the explosive growth of the Internet since the Telecommunications Act was adopted. Nevertheless, Congress gave the Commission broad enough powers in the Telecommunications Act, in

⁴⁸ Comments of Telegate at 5 *et seq.*

conjunction with the authority contained in the 1934 Act, to ensure the development of competition in this sector as in others.

There is ample legal justification for rules that would allow all competitors in this market to have reasonable, nondiscriminatory access to the ILECs' directory assistance databases and subscriber list information. In addition, there are compelling policy reasons to take this step. As the Commission is aware, the state commissions in both California and New York have required ILECs in those states to give non-carrier providers of directory assistance nondiscriminatory access to their DA databases. There is no reason why ILECs serving those states – including SBC and Bell Atlantic – should not provide nondiscriminatory access to their databases in all of the states in which they operate. Indeed, it would seem to be more complicated to implement one set of access requirements in one state and a different set of access requirements in other states. This is especially true because, as the Commission observed in the *US West Forbearance Order*, ILEC provision of directory assistance service typically involves interLATA access to a database.⁴⁹ These actions already form the basis of an emerging national policy framework that would promote robust competition in directory services. The Commission now can complete this policy framework.

For these reasons, the Commission should establish uniform requirements for database access nationally. At the same time, the Commission should adopt the proposals contained in Telegate's initial comments and ensure that no single provider will enjoy a monopoly over the provision of nationally- recognized DA number, 411.

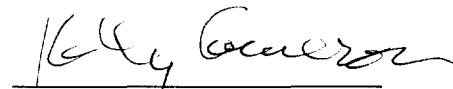
CONCLUSION

Telegate continues to support the Commission's efforts to foster competition in the provision of competitive directory assistance services. To ensure effective competition, however, two steps must be taken. First, *all* directory assistance providers must be entitled to nondiscriminatory access to ILEC directory assistance databases and subscriber list information. Second, the Commission should ensure that customers have equal access to all competitors in the directory assistance market as proposed in Telegate's initial comments.

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⁴⁹ *US West Forbearance Order* at ¶¶ 8-9, 14-15. *See also* Comments of INFONXX at 10-11.

CERTIFICATE OF SERVICE

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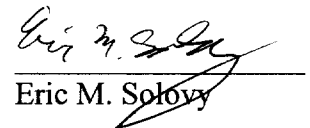
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